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Supreme Court of the United States

OCTOBER TERM, 1953

No. M, Original

STATE OF ALABAMA, *Complainant*

v.

STATE OF TEXAS; STATE OF LOUISIANA; STATE OF FLORIDA; STATE OF CALIFORNIA; GEORGE M. HUMPHREY; DOUGLAS McKAY; ROBERT B. ANDERSON; IVY BAKER PRIEST, *Defendants.*

OBJECTIONS OF THE STATE OF LOUISIANA TO THE MOTION OF THE STATE OF ALABAMA FOR LEAVE TO FILE COMPLAINT, AND STATEMENT IN SUPPORT OF SUCH OPPOSITION

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Now comes the State of Louisiana, through its Attorney General, acting pursuant to an order of this Court, dated the twenty-sixth day of October, 1953, permitting the several defendants herein a period of forty-(40) days within which to file objections to this Court, granting leave to the State of Alabama to file complaint, and makes this appearance for the sole and only purpose of opposing the filing of such complaint, and submits the following reasons and statement in support of such opposition:

I.

Alabama has no legal standing under its compliint to sue, either as sovereign or as parens patriae for its citizens, with respect to an appropriation or grant of property by Congress.

II.

Alabama is not the real party in interest. She may not sue a sovereign state, Louisiana, on behalf of certain of her citizens, in violation of the Eleventh Amendment.

III.

Alabama's complaint fails to present a case or controversy in any respect under Article III of the Constitution.

IV.

Alabama's complaint should be dismissed for want of equity.

WHEREFORE, the State of Louisiana prays that its objections and opposition to the filing of complaint by the State of Alabama be sustained; that the motion of the State of Alabama for leave to file said complaint be denied; and for all appropriate orders thereunto pertaining.

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STATEMENT IN SUPPORT OF OBJECTIONS

I.

ALABAMA HAS NO LEGAL STANDING UNDER ITS COMPLAINT TO SUE, EITHER AS SOVEREIGN OR AS PARENS PATRIAE FOR ITS CITIZENS, WITH RESPECT TO AN APPROPRIATION OR GRANT OF PROPERTY BY CONGRESS.

(A) The Submerged Lands Act is, in Effect, an Appropriation Act and a Grant of Property by the United States.

We think it perfectly clear that Public Law 31 (The Submerged Lands Act), is only an appropriation act and a grant of property by the United States.

Thus Section 3, the key section, does two basic things: it (1) quitclaims, in effect, certain lands beneath navigable waters to the States, and (2) appropriates to the States all moneys subject to the control of the United States in escrow, which were paid under State leases. At bottom, therefore, the Act merely quitclaims any interest the United States may have in the property, and appropriates certain moneys held by the United States in escrow.

(B) Alabama Has No Legal Standing to Attack an Appropriation Act and a Grant of Property by the United States.

1. *Alabama has no legal standing to attack an Appropriation Act.*

Alabama, in her lengthy brief, has failed to cite a single authority indicating that she may attack either an appropriation act or a grant of property by the United States, as a sovereign or as *parens patriae*.

On the contrary, her claim that in either capacity she may assail an appropriation act and grant of property by the United States is in the very face of the potent case of *Massachusetts* v. *Mellon* (1923), 262 U. S. 447. That was also an original suit in this Court. Massachusetts sought to attack the constitutionality of the Maternity Act of

1921, which provided "for an initial appropriation and thereafter annual appropriations" (262 U. S. 478), and Massachusetts claimed that these appropriations cast an unfair burden upon her as an industrial state and would cause her "to lose the share which it would otherwise be entitled to receive of the moneys appropriated", and that the Act was unconstitutional as a violation of the Tenth Amendment.

This Court flatly dismissed the case for *want of jurisdiction*. It held that:

> ". . . the State of Massachusetts presents no justiciable controversy, either in its own behalf or as the representative of its citizens." (262 U. S. 480).

This Court went on further to point out that, at best, only political, not judicial questions were involved, and that *no personal or property right* of Massachusetts had been injured. The Court, among other things, said:

> "First. The State of Massachusetts in its own behalf, in effect, complains that the act in question invades the local concerns of the state, and is a usurpation of power, viz. the power of local self-government, reserved to the states.
>
> Probably it would be sufficient to point out that the powers of the state are not invaded, since the statute imposes no obligation *but simply extends an option which the state is free to accept or reject*. But we do not rest here. Under article 3, section 2, of the Constitution, the judicial power of this court extends 'to controversies . . . between a state and citizens of another state' and the court has original jurisdiction 'in all cases . . . in which a state shall be a party'. The effect of this is not to confer jurisdiction upon the court merely because a state is a party, but only where it is a party to a proceeding of judicial cognizance. Proceedings not of a justiciable character are outside the contemplation of the constitutional grant." (262 U. S. 480). (Emphasis supplied).

. . . . . .

"What, then, is the nature of the right of the state here asserted, and how is it affected by this Statute? Reduced to its simplest terms, it is alleged that the statute constitutes an attempt to legislate outside the powers granted to Congress by the Constitution and within the field of local powers exclusively reserved to the states. Nothing is added to the force or effect of this assertion by the further incidental allegations that the ulterior purpose of Congress thereby was to induce the states to yield a portion of their sovereign rights; *that the burden of the appropriations falls unequally upon the several states;* and that there is imposed upon the states an illegal and unconstitutional option either to yield to the federal government a part of their reserved rights or lose their share of the moneys appropriated. *But what burden is imposed upon the states, unequally or otherwise? Certainly there is none,* unless it be the burden of taxation, and that falls upon their inhabitants, who are within the taxing power of Congress as well as that of the states where they reside." (262 U. S. 482). (Emphasis supplied).

* * * * * *

"It follows that, in so far as the case depends upon the assertion of a right on the part of the state to sue in its own behalf, we are without jurisdiction. In that aspect of the case we are called upon to adjudicate, not rights of person or property, not rights of dominion over physical domain, not quasi sovereign rights actually invaded or threatened, but abstract questions of political power, of sovereignty, of government." (262 U. S. 484, 485).

And it relied on *Georgia* v. *Stanton* (1868), 6 Wall. 50, where Georgia sought to enjoin the Secretary of War from carrying into execution certain acts of Congress which, it was claimed, would annul and abolish the existing State governments. That case was also dismissed for *want of jurisdiction* on the ground that the bill presented "no case of private rights or personal property infringed." (6 Wall. 77).

Also, this Court utterly demolished Massachusetts' argument that she could sue in *parens patriae* or "as the representative of its citizens", saying:

> "But the citizens of Massachusetts are also citizens of the United States. It cannot be conceded that a state, as parens patriae, may institute judicial proceedings to protect citizens of the United States from the operation of the statutes thereof . . . it is no part of its duty or power to enforce their rights in respect of their relations with the federal government. In that field, it is the United States, not the state, which represents them as parens patriae, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status." (262 U. S. 485).

Alabama does not claim any specific interest in either the funds in escrow appropriated or the property granted to the States, and indeed she has none. The only possible impact that this appropriation and grant can have upon Alabama would be to increase the incidence of federal taxation on her citizens. As pointed out in *Massachusetts* v. *Mellon, supra*, neither Alabama nor any other State has legal standing to complain of the exercise of the taxing power by the United States.

Massachusetts v. *Mellon* has been repeatedly cited for the proposition that no legal rights of the State were affected by an appropriation act of the United States. See *Perkins* v. *Lukens Steel Co.* (1940), 310 U. S. 113, 125; and Mr. Justice Brandeis concurring in *Ashwander* v. *Tennessee* (1935), 297 U. S. 288, 348.

In addition, just as in *Massachusetts* v. *Mellon*, the statute was held to have "simply extended an option which the state is free to accept or reject" (262 U. S. 480), so here the Submerged Lands Act has simply extended an option to Alabama which Alabama is free to accept or reject. For Alabama is free to accept or reject the quitclaim grant of the Submerged Lands Act. She is thus in a position strikingly similar to that of Massachusetts.

We submit that *Massachusetts* v. *Mellon* is an insuperable obstacle to the jurisdiction of this Court in this case, which Alabama simply cannot overcome, or pretend does not exist. Alabama's discussion of *Massachusetts* v. *Mellon* in her brief is wholly inadequate, and fails to come to grips with the issue of jurisdiction.

2. *Alabama has no legal standing to attack a Congressional Grant of Property of the United States.*

Alabama has failed to cite any authority indicating that anybody may judicially attack a congressional grant of property by the United States. She is wholly precluded from making any such attack by Article IV, Section 3, clause 2 of the Constitution, which provides:

> "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States;"

No one, sovereign or individual, has ever, with success, judicially attacked a grant of government property by the United States. This delegation of power, in trust to Congress, is exclusive and absolute, and "no state can interfere with this right, or embarrass its exercise." *Van Brocklin* v. *Tennessee* (1886), 117 U. S. 151, 168. This sweeping congressional power is "without limitations" and

> ". . . 'it is not for the courts to say how that trust shall be administered. That is for Congress to determine.' Thus, Congress may constitutionally limit the disposition of the public domain in a manner consistent with its views for public policy." *United States* v. *San Francisco* (1940) 310 U. S. 16, 29, 30. *Light* v. *United States* (1911) 220 U. S. 523, 537; *United States* v. *Gratiot*, 14 Pet. 526, 527.

Indeed, in *United States* v. *California* (1947), 332 U. S. 19, this Court said, with respect to the very property now in question:

> "For Article IV, Section 3, Cl. 2 of the Constitution vests in Congress 'Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.' We have said that *the constitutional power of Congress in this respect is without limitation.* *United States* v. *City and County of San Francisco;* 310 U. S. 16, 29, 30, 60 S. Ct. 749, 756, 757, 84 L. Ed. 1050. Thus neither the courts nor the executive agencies, could proceed contrary to an Act of Congress in this congressional area of national power." (332 U. S. 27).
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> "But beyond all this we cannot and do not assume that Congress, which has constitutional control over Government property, will execute its powers in such way as to bring about injustices to states, their subdivisions, or persons acting pursuant to their permission. See *United States* v. *State of Texas,* 162 U. S. 1, 89, 90, 16 S. Ct. 725, 754, 40 L. Ed. 867; *Lee Wilson and Co.* v. *United States,* 245 U. S. 24, 32, 38, S. Ct. 21, 23, 62 L. Ed. 128." (332 U. S. 40). (Emphasis supplied).

Disposition of Government property by *grant* has always been held to be an appropriate method of congressional disposition, and has never been successfully assailed by a third party. See *Emblen* v. *Lincoln Land Company* (1902), 184 U. S. 660; *Gibson* v. *Ghouteau* (1872), 13 Wall. 99; *Irvine* v. *Marshall* (1858), 20 How. 558; *Leases of Mineral Lands on Isle Royale* (1846), 4 Op. Atty. Gen. 487. Alabama may no more assail this grant of Government property than it may attack a patent issued under the Swamp Land Acts 43 U. S. C. 982, or the many other Congressional acts providing for the issuance of grants to States and individuals.

In addition, a grant by Congress of property previously adjudicated by this Court to be in the United States, has been recognized by this Court as a complete bar to further litigation. In *United States* v. *Wyoming* (1948), 335 U. S. 893, title to certain real estate had been adjudicated to be in the United States. Congress then passed an Act directing the issuance of a patent to the State of Wyoming for the real estate involved, and the patent was issued. In recognizing the Act of Congress and finally terminating the litigation, this Court stated that *"there is no need or requirement for further consideration by this court"*, (emphasis supplied), saying:

> "The claim for damages arose entirely from the possession by the defendant Ohio Oil Company of the land described in said Act of Congress, and its extraction of oil therefrom. Inasmuch as the patent issued by the United States vests title to said land in the State of Wyoming during the entire period of possession by the defendant Ohio Oil Company, there is no need or requirement for further consideration by the Court of plaintiff's demand for a money judgment."

United States v. *Wyoming, supra,* is a precedent squarely in point and a complete bar to any further litigation over the property. Since such an Act of Congress binds the United States, *a fortiori*, it also binds Alabama.

The cases cited by Alabama, *Georgia* v. *Pennsylvania RR* (1945, 324 U. S. 439; *Pennsylvania* v. *West Virginia* (1923), 262 U. S. 553; *United States ex rel. Chapman* v. *Federal Power Commission* (1953), 345 U. S. 153; *Missouri* v. *Holland* (1920), 252 U. S. 416; and *Hopkins Savings Association* v. *Cleary* (1935), 265 U. S. 315, simply do not lend any standing to Alabama to attack an appropriation act or grant of Government property by the United States.

Illinois Central R. Co. v. *Illinois* (1892), 146 U. S. 387, cannot be of any comfort to Alabama, on the subject of

the absolute control by Congress over Government property. That case did not involve Article IV, Section 3 of the Constitution; and, interestingly enough, it confirms the right of a State to hold lands under navigable waters in trust for its citizens—the very purpose of the Submerged Lands Act.

As we have shown above, the power of Congress to dispose of Government property is absolute and exclusive. Congress may sell it or give it away, as it deems best. No peculiar method of disposition, as by the purchase of transmission lines which was upheld in *Ashwander* v. *Tennessee, supra*, is here involved. An outright grant of Government property is a thoroughly accepted mode of disposition.

Therefore, we need not argue that Congress was wise in quitclaiming or granting the property; Congress has specifically stated in Section 3 of the Submerged Lands Act that ownership of the lands by the states is *"in the public interest"*. It is not for this Court to say otherwise or to supervise the wisdom of Congressional enactments. But we may point out that the decisions of this Court in the *California*, *Louisiana*, and *Texas* cases, to say the least, left conditions in the oil industry and otherwise very unsettled. It is common knowledge that drilling and oil exploration in the marginal sea was brought to a practical standstill as result of those decisions. And the commonly accepted view had been that the States owned the lands and resources under the marginal sea. Thus, we need not belabor the obvious reasons standing out boldly in support of the wisdom of this Congressional legislation, if any were needed.

(C) Alabama Has No Legal Standing in This Court to Seek the Vindication of a General Public Interest.

Both as sovereign and as *parens patriae* for its citizens, Alabama seeks in its complaint to vindicate an interest which complainant itself describes as belonging to all the people.

We have heretofore cited *Massachusetts* v. *Mellon* as authority for the proposition that a state may not attack an appropriation act of Congress. In that case this Court pointed out the futility of a state seeking judicial redress for an injury suffered in common by people generally and in which the complainant has only some indefinite interest in the relief sought.

Here, Alabama seeks to vindicate a general public interest by asking this Court to construe an act of Congress. The juridicial impossibility of such action was clearly stated in *Perkins* v. *Lukens Steel Company*, *supra*.

(D) Alabama Has No "Equal Footing" Rights in Regard to an Appropriation or Grant of Property of the United States.

The State of Alabama seeks to invoke the jurisdiction of this Court in part on the basis that its sovereign rights are being infringed or placed in jeopardy under the "equal footing" clause of the Constitution of the United States. Complainant's position is largely predicated on the alleged circumstances that defendant States have been given certain economic advantages under the Submerged Lands Act (Public Law 31, 83rd. Congress, 1st Sess.; c. 65), and that the State of Alabama and its citizens are thereby deprived of their asserted share of certain bounties.

The "equal footing" clause applies only to political rights and obligations, not to economic interests. *Stearns* v. *State of Minnesota* (1900), 179 U. S. 223, 245. Citing with approval the case last mentioned, this Court made the following pronouncement in *United States* v. *State of* Texas (1950), 339 U. S. 707, 716, to-wit:

> "The 'equal footing' clause has long been held to refer to political rights and to sovereignty . . . It does not, of course, include economic stature or standing . . . Area, location, geology, and latitude have created great diversity in the economic aspects of the several states. The requirement of equal footing was designed not to wipe out those diversities but to create parity as respects political standing and sovereignty."

The Submerged Lands Act does not create obligations of one state to another but, in addition to the appropriation therein made, constitutes a grant of property by the United States to the several states.

The following statement was made in *Stearns* v. *State of Minnesota* (179 U. S. 223, 245), to-wit:

> "It has often been said that a state admitted into the Union enters therein in full equality with all the others, and such equality may forbid any agreement or compact limiting or qualifying political rights and obligations; whereas, on the other hand, a mere agreement in reference to property involves no question of equality of status, but only of the power of a state to deal with the nation or with any other state in reference to such property. *The case before us is one involving simply an agreement as to property between a state and the nation.*" (Emphasis supplied.

Even if it were possible to apply economic factors to the "equal footing" clause, Alabama could not complain that the Submerged Lands Act, expressly or impliedly, confers any greater benefits on one State than another. When the Submerged Lands Act was adopted, the fact that the State of Louisiana had known oil and gas resources within its maritime belt, while no such discoveries had been made in Alabama's submerged coastal lands, brought about no resulting status of disparity between the two States named. The Act not only had the effect of relinquishing all propriety rights of the United States to the several States, covering lands and the *then known* resources thereof within the "boundaries" of such States, but it also gave to each State the right of future exploration and development within such areas.

II.

ALABAMA IS NOT THE REAL PARTY IN INTEREST. SHE MAY NOT SUE A SOVEREIGN STATE, LOUISIANA, ON BEHALF OF CERTAIN OF HER CITIZENS, IN VIOLATION OF THE ELEVENTH AMENDMENT.

So far as Alabama is suing with respect to commercial and shrimp fishing in the waters of Louisiana, she sues, not on behalf of herself, but in an endeavor to compel Louisiana to respect alleged rights of certain commercial and shrimp fishermen resident in Alabama.

But it is a fundamental rule in original jurisdiction cases that a motion for leave to file a complaint must be denied where the State brings suit on behalf of certain of her citizens and is not the real party in interest. This rule stems from the Eleventh Amendment which prohibits suit by citizens of one State against another State. Thus, a citizen of one State may not sue another State through the camouflage of persuading the State of his residence to sue on his behalf in the original jurisdiction of this Court. *Louisiana* v. *Texas* (1899), 176 U. S. 1; *New Hampshire* v. *Louisiana* (1883), 108 U. S. 96.

Nor can a State escape the ironbound prohibition of the rule by "asserting an economic interest." The motion for leave to file must be denied. *Oklahoma* v. *Cook* (1938), 304 U. S. 389, 394; *Oklahoma* v. *Atchison, Topeka and Santa Fe Railway Co.* (1911), 220 U. S. 277. Thus in the *Cook* case, Mr. Chief Justice Hughes, speaking for a unanimous Court, said:

> "In *Oklahoma* v. *Atchison, Topeka & Santa Fe Railway Co.*, 220 U. S. 277, 31 S. Ct. 434, 55 L. Ed. 465, the State sought to maintain an action in this Court against the carrier to restrain it from charging unreasonable rates within Oklahoma. Setting forth the congressional grant under which the railway in question was operated and insisting that the Company was not entitled to charge the inhabitants of Oklahoma a greater freight rate for the transportation of certain commodities than that authorized for similar service in Kansas, the State alleged its interest in the develop-

ment of its communities and in the success of its industries, and the menace to the future of the State through what was deemed to be a violation of the conditions of the grant. *But the Court pointed out that the State was not seeking to protect a direct interest of its own in the transportation of the commodities in question, but was endeavoring to compel the railway company to respect the rights of the shippers of these commodities.* Id., pages 286, 287, 31 S. Ct. 434. The bill was dismissed. The Court summarized its conclusion in these words: 'We are of opinion that the words in the Constitution conferring original jurisdiction on this Court in a suit "in which a state shall be a party" are not to be interpreted as conferring such jurisdiction in every cause in which the state elects to make itself strictly a party plaintiff of record, *and seeks not to protect its own property, but only to vindicate the wrongs of some of its people* . . .'". (304 U. S. 394, 395). (Emphasis supplied).

Both the *Cook* and *Santa Fe* cases were cited with approval in *Georgia* v. *Pennsylvania RR* (324 U. S. 446, 451).

Since the only injury complained of with respect to fishing is to citizens of Alabama, not to the State itself, the State is not the real party in interest and the motion for leave to file the complaint must be denied. The Eleventh Amendment rigidly prohibits suit by them against Louisiana, directly or indirectly.

III.

ALABAMA'S COMPLAINT FAILS TO PRESENT A CASE OR CONTROVERSY IN ANY RESPECT UNDER ARTICLE III OF THE CONSTITUTION.

Alabama's complaint fails to set forth a "case or controversy" under Article III of the Constitution, for the following reasons:

(A). Alabama has suffered no infringement of any personal or property right by virtue of the appropriation and grant of property in the Submerged Lands Act, and

hence has no legal standing to sue with respect to it, as pointed out in I (C) above. *Massachusetts* v. *Mellon* alone is a complete bar.

(B). There is no case or controversy with respect to any alleged "attempts" by Louisiana to extend her boundaries seaward. (Complaint par. XXXIV). The Louisiana Legislature, the only branch of the Louisiana State Government constitutionally empowered to extend her boundaries, has taken no action whatever with respect thereto since the entry of the Court's decree in 1950 in *United States* v. *Louisiana*, 340 U. S. 899, or the passage of the Submerged Lands Act. No official of the State of Louisiana is empowered to "extend" or to "attempt" to extend her boundaries. The result is that the allegations of "attempts" to extend Louisiana's boundaries seaward are completely hollow and say nothing. They have no legal substance and should be disregarded. Once disregarded, Alabama is left without anything resembling a boundary controversy.

(C) The seaward boundaries of Louisiana were neither created nor altered under the provisions of the Submerged Lands Act.

Title I, Section 2 (b) of the Submerged Lands Act reads as follows, to-wit:

> "The term 'boundaries' includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes *as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico.*"

Title II, Section 4 of the same Act provides that:

> "The seaward boundary of each original coastal State is hereby approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress."

Thus, it is seen that in adopting the Submerged Lands Act Congress only dealt with the seaward boundaries of the several States in two main respects: First, it recognized such boundaries as they existed when each respective State was admitted to the Union, and second, it gave consent to those States admitted to statehood after the formation of the Union that had not already done so to extend their seaward boundaries to a line three geographical miles distant from its coast line.

(D). In any event, there is no case or controversy with Alabama over the "assertion" of dominion by Louisiana over oil companies or individual Alabama fishermen outside the three mile belt or in any other area. First, whatever oil leases Louisiana may enter into with third parties in any seaward area is of absolutely no concern to

Alabama. Such leases do not affect her at all. Second, so far as the "assertion" of "dominion" over fishermen is concerned, Alabama sues not on her own behalf, but only on behalf of individual fishermen. She is thus not the real party in interest and the motion for leave to file a complaint in that respect must be denied, as pointed out in II, *ante*. There is certainly no vestige of a case or controversy there.

IV.

ALABAMA'S COMPLAINT IS INSUFFICIENT FOR WANT OF EQUITY.

Alabama's complaint does not set forth any ground of equitable jurisdiction, and so is wholly insufficient, for the following reasons:

(A). Alabama Does Not Allege the Absence of an Adequate Remedy at Law.

The absence of such an allegation, alone, is fatal to Alabama's claim to equitable relief. Thus, in *Henrietta Milk* v. *Rutherford County, N.C.* (1930), 281 U. S. 121, a bill seeking to enjoin the collection of taxes was dismissed for want of jurisdiction on the ground that there was an adequate remedy at law. Speaking for a unanimous court, Mr. Chief Justice Hughes delineated the basic requirement that equitable jurisdiction depends upon the lack of an adequate remedy at law, as follows:

> "Section 16 of the Judiciary Act of 1789 (1 Stat. 82) provided 'That suits in equity shall not be sustained in either of the courts of the United States, in any case where plain, adequate and complete remedy may be had at law.'"

See also, *Terrace* v. *Thompson* (1923), 263 U. S. 197, 214, where the Court, among other things, said:

> "That a suit in equity does not lie where there is a plain adequate and complete remedy at law is so well understood as not to require the citation of authorities."

(B). Alabama is Suffering No "Irreparable Injury" With Respect to the Appropriation and Grant of Property.

Alabama has no legal standing to sue and no right to any "equal footing" with respect to the appropriation of the funds held in escrow or the grant of property made by the Submerged Lands Act. Accordingly she can suffer no "irreparable injury" there.

(C). There Is No Case or Controversy Over Boundaries, Much Less Any "Irreparable Injury" Concerning Them.

There is simply no legal connection between (1) the appropriation of funds in escrow and the grant of property made by the Submerged Lands Act, and (2) Alabama's allegations concerning boundaries and offshore commercial and shrimp fishing. Alabama's allegations concerning the Submerged Lands Act cannot be made to look any better by referring, in the same document, to alleged "attempts" to extend Louisiana's boundaries and to offshore shrimp fishing. The two sets of allegations acquire no cumulative strength by virtue of being printed in the same document, and should, we submit, be examined wholly separately. Particularly from the standpoint of want of equity.

With respect to Louisiana's seaward boundaries, the Submerged Lands Act did not purport to alter them or create new ones (III C, *supra*). And the Louisiana Legislature, the only branch of the Louisiana State Government which could have constitutionally undertaken to extend them, has taken no action in that regard since the passage of said Act and the decree of the Court in *United States* v. *Louisiana*, 340 U. S. 899, *supra*.

Moreover, no one with any power to act for the State can "attempt" or has "attempted" to extend Louisiana's seaward boundaries. In fact, an "attempt" to extend a boundary is a sheer contradiction in terms. Only the Legislature can extend them, and in turn, the Legislature cannot "attempt" to extend them. It can only act or refrain from acting. Hence, Alabama's allegations that

Louisiana has been "attempting" to extend her boundaries (Complaint, par. XXXIV), have no legal substance; there is no case or controversy respecting boundaries, and there is no "irreparable injury" with respect thereto.

(D). There Are Adequate State Remedies Available to Any Alabama Fisherman Who Might Complain of Discrimination.

Alabama's argument that Louisiana is somehow "threatening" Alabama fishermen with discriminatory license fees and excise taxes is simply contrary to Louisiana law. While Louisiana is not called upon in this jurisdictional issue to plead and show the fairness of its commercial fishing laws to residents of other States in relation to her own citizens, an examination of Louisiana statutes clearly reflects the non-discriminatory nature of such laws. Louisiana Revised Statutes of 1950, Title 56, sections 351-401. Indeed, these laws are so plainly non-discriminatory that any official endeavoring to give an Alabama citizen discriminatory treatment would be subject to mandamus or other corrective judicial remedy under Louisiana law. Thus, (1) Alabama herself has no interest whatever in license fees and excise taxes assessed against certain of her citizens, *Toomer* v. *Witsell* (1948), 334 U. S. 385; (2) the claim of discrimination is wholly groundless; (3) there are one or more adequate remedies at law for any Alabama citizen who might claim discrimination; and (4) these are adequate State remedies.

(E). Alabama's Complaint Does Not Allege Facts Showing "Irreparable Injury" to Her by Virtue of Any "Assertion" of Dominion by Louisiana.

Taking, at their face value, the allegations of Alabama's complaint (paragraphs XXV, XXVI) that Louisiana is "asserting" dominion over some area that is not agreeable to Alabama, it does not follow from that that Alabama citizens, much less Alabama herself, do not have perfectly

adequate remedies at law or that they are suffering "irreparable injury" by reason thereof. So far as Alabama herself is concerned, she is in no wise affected. She may not sue Louisiana on behalf of her fishermen, in violation of the Eleventh Amendment (Point II hereof).

Moreover, there is no allegation in Alabama's complaint of the lack of an adequate remedy at law; and there is a complete absence of allegations of fact showing that Alabama fishermen are suffering "irreparable injury" in any respect.

First, any Alabama fisherman wanting to fish in Louisiana waters can obtain a license which will solve all his problems. Second, any Alabama fisherman who wants to fish off Louisiana without obtaining a license has perfectly orthodox legal remedies for testing out such a claim of right, with review by this Court. With respect to whether license fees are properly charged, Louisiana provides clear remedies at law, including full opportunity by any fisherman to defend. See Louisiana Revised Statutes of 1950, Title 56, sections 376-398, 496 and 500. Third, any taxes paid under protest may be recovered under a "Remedy at Law", in either a State or Federal court, specifically provided by Section 1576 of Title 47, Louisiana Revised Statutes of 1950, for their recovery (see appendix). And by the same sub-title, enjoining the collection of a Louisiana tax is specifically prohibited (Section 1575).

The adequacy of the remedies at law and the absence of any "ireparable injury" in similar situations, are clearly established. In *California* v. *Latimer* (1938), 305 U. S. 255, an original suit in this Court seeking equitable relief was dismissed for want of equity on the ground that there was an adequate remedy at law. The State of California sued to enjoin the members of the Railroad Retirement Board from enforcing the Railroad Retirement Act against a state-owned railroad, the State Belt Railroad, claiming not to be subject to that Act. The bill asserted that the defendants had "threatened" to require complainant to

keep records at "great expense" and to enforce "certain penalties" for non-compliance with the Act. The bill prayed for an injunction against enforcement of the Act and for a decree declaring it to be unconstitutional, if applied to the State Belt Railroad.

In dismissing the bill for want of equity on the ground that there were adequate remedies at law, Justice Brandeis, speaking for a unanimous Court, said:

> "The defendants moved to dismiss the bill, assigning therefor nine grounds. We need consider only the objection that the bill is without equity. For we are of opinion that there was adequate opportunity to test at law the applicability and constitutionality of the Acts of Congress; and that no danger is shown of irreparable injury if that course is pursued." (305 U. S. 258, 259).
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> "The only 'threats' made against the complainant in connection with these sections is a ruling by the Railroad Retirement Board that the State Belt Railroad is subject to the Railroad Retirement Acts. No specific action in relation to that railroad appears to have been taken by the Board. Regulations have been prescribed under sections 8 and 10 which are simple and of a type which can be complied with largely by transcriptions from payrolls. The bill alleges that compliance with the regulations would subject the State 'to great expense'. No supporting detail or specification is given. *Such a general statement is not an adequate basis for relief on the ground of irreparable damages.*" (305 U. S. 259, 260). (Emphasis supplied).
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> "Moreover, the Board is without power to enforce its regulations except by resort to legal proceedings, as provided in Section 10(b) 4; and *in any suit which it may institute* to enforce the regulations *ample opportunity is afforded to defend, on the ground that State Belt Railroad is not subject to the Railroad Retirement Acts.* It is contended that the possible penalty, in case of a prosecution under Section 13, is so

serious as to prevent the opportunity to defend from being an adequate remedy. Compare *Ex parte Young*, 209 U. S. 123, 165, 28 S. Ct. 441, 456, 52 L. Ed. 714, 13 L. R. A., N. S., 932, 14 Ann. Cas. 764. No prosecution has been instituted or threatened." (305 U. S. 260, 261). (Emphasis supplied).

Also, there can be no "irreparable injury" involved with regard to the collection of excise or other taxes, for if the Alabama fishermen do not want to pay them they have a perfectly clear remedy at law for getting them back. Section 1576 of Title 47 of the Louisiana Revised Statutes of 1950, (see appendix), provides a specific remedy at law for obtaining a refund, in either State or Federal Court, of any tax improperly exacted. As was so cogently pointed out in *California* v. *Latimer, supra:*

"The alleged threat of the Commissioner of Internal Revenue to require payment of the tax does not show danger of irreparable injury. The only threat alleged is the ruling that the Carriers Taxing Act is applicable to this railroad—a ruling made in answer to an enquiry by the Attorney General of the State. The tax for the year is $7,862.32 payable by the State Belt Railroad; and an equal amount payable by the employees to be deducted by it from their compensation. *Payment of the tax would not expose the State to irreparable injury, since the amount paid with interest could be recovered if not due.* Payment followed by proceedings to recover the amount would involve some delay, as an action at law to recover the sum paid could not be instituted until six months after making the claim for refund, if the Commissioner should fail to act earlier upon it. Such possible delay, it is urged, is a special circumstance which justifies resort to a suit for an injunction in order that the question of liability may be promptly determined. If the delay incident to such proceedings justified refusal to pay a tax, the federal rule that a suit in equity will not lie to restrain collection on the sole ground that the tax is illegal, could have little application. For possible delay of that character is the common incident of practically

every contest over the validity of a federal tax." (Emphasis supplied).

In addition, "It is particularly desirable to decline to exercise equity jurisdiction when the result is to permit a state court to have an opportunity to determine questions of state law which may prevent the necessity of decision on a constitutional question. *City of Chicago* v. *Fieldcrest Dairies*, 316 U. S. 168, 173." *Burford* v. *Sun Oil Co.* (1943) 319 U. S. 333, note 29. In the instant case, whether Louisiana is "asserting" any dominion anywhere is a question of state law, which depends upon the construction of Louisiana statutes, and which can only be determined by the Louisiana courts.

So here (1) there is no showing of facts constituting any "irreparable injury" to Alabama or to any citizen thereof; (2) it is clear that in any suit which might be brought to subject any Alabama citizen (not the State of Alabama) to the Louisiana shrimp fishing laws, in any area, such citizen would have "ample opportunity to defend", with review by this Court; (3) any Alabama fisherman may sue at law to recover any taxes improperly collected, with review by this Court; and (4) questions of State law are involved. Hence, there are clear and adequate remedies at law and the bill should be dismissed for want of equity.

CONCLUSION

The motion of the State of Alabama for leave to file a complaint should be denied.

Respectfully submitted,

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December 1953.

APPENDIX

Louisiana Revised Statutes of 1950, Title 47, Revenue and Taxation.

Sub-Title Part III, Assessment and Collection Procedures.

Section 1575: *Injunctions Prohibited.*

No court of this State shall issue any process whatsoever to restrain the collection of any tax, penalty, interest or other charge imposed in this Sub-title.

Section 1576: *Payment of Tax Under Protest: Remedy At Law For Recovery.*

A right of action is hereby created to afford a remedy at law for any person aggrieved by the prohibition of courts restraining the collection of tax, penalty, interest or other charges imposed in this Sub-title. The person resisting the payment of any amount found due by the collector, or of enforcement of any provisions of this Sub-title, shall pay the amount found due to the collector and at that time shall give the collector notice of his intention to file suit for the recovery thereof. Upon receipt of this notice the amount paid shall be segregated and held by the collector or his duly authorized representatives for a period of thirty days. If suit is filed within the thirty-day period for the recovery of such amount, the funds segregated shall be further held pending the outcome of the suit. If the person prevails, the collector shall refund the amount to the claimant, with interest at the rate of 2% per annum covering the period from the date said funds were received by the collector to the date of refund.

This Section shall afford a legal remedy and right of action in any state or federal court having jurisdiction of the parties and subject matter, for a full and complete adjudication of any and all questions arising in the enforcement of this Sub-title, as to the legality of any tax accrued or accruing or the method of enforcement thereof. In such action, service of process upon the collector shall be sufficient service, and he shall be the sole necessary and proper party defendant in any such suit.

This Section shall be construed to provide a legal remedy in the state or federal courts, by action at law, in case such taxes are claimed to be an unlawful burden upon interstate commerce, or the collection thereof, in violation of any Act of Congress or the United States Constitution, or the Constitution of the State of Louisiana, or in any case where jurisdiction is vested in any of the courts of the United States.

Upon request of a person and proper showing by such person that the principle of law involved in an additional assessment is already pending before the courts for judicial determination, such person, upon agreement to abide by the decision of the courts, may pay the additional assessment under protest, but need not file an additional suit. In such cases the tax so paid under protest shall be segregated and held by the collector until the question of law involved has been determined by the courts and shall then be disposed of as therein provided.

Certificate of Service

I hereby certify that I have, this third day of December, 1953, served the foregoing document upon each of the following persons by mailing a copy thereof, postage prepaid, to him or her at the address listed below.

Hon. Si Garrett
Attorney General of Alabama
State Capitol
Montgomery, Alabama

Hon. Richard W. Ervin
Attorney General of Florida
State Capitol
Tallahassee, Florida

Hon. John Ben Shepperd
Attorney General of Texas
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Austin, Texas

Hon. George M. Humphrey
Secretary of the Treasury
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Hon. Edmund G. Brown
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Hon. Douglas McKay
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Hon. Robert B. Anderson
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Hon. Herbert Brownell, Jr.
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Hon. Ivy Baker Priest,
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BAILEY WALSH
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